

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Telephone Number Portability; North)	
American Numbering Plan Administration;)	CC Docket Nos. 95-116, 92-237, 99-200
Numbering Resource Optimization)	
)	
E911 Requirements for IP-Enabled Service)	WC Docket No. 05-196
Providers)	
)	
Telecommunications Relay Services and)	WC Docket No. 03-123
Speech-to-Speech Services for Individuals)	
with Hearing and Speech Disabilities)	

**REPLY COMMENTS OF NEUSTAR, INC. IN SUPPORT OF REQUEST TO APPROVE
NEW OWNERSHIP OF THE NUMBERING ADMINISTRATOR**

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I. INTRODUCTION AND SUMMARY

Neustar, Inc. (“Neustar”), Golden Gate Private Equity, Inc. (“Golden Gate Capital”), and Hux Investment Pte. Ltd. (“GIC Investor”) respectfully submit these reply comments in support of the request (the “Request”) that the Federal Communications Commission (“Commission”) approve Neustar’s new owner, Aerial Investors LLC (“Aerial Investors”), a limited liability company formed and controlled by Golden Gate Capital.

Only three parties filed comments in response to Neustar’s request – the North American Portability Management LLC (“NAPM”), Ericsson’s wholly owned subsidiary Telcordia Technologies, Inc. d/b/a iconectiv (“Telcordia”), and Ms. Betty Ann Kane.¹ The NAPM does not object to Neustar’s request.² Although Telcordia and Ms. Kane raise questions about

¹ Although Chairman of the District of Columbia Public Service Commission, Ms. Kane submitted her comments “solely on [her] behalf,” rather than on behalf of the agency.

² North American Portability Management LLC Comments at 1.

Neustar's new owners and the transition of the Local Number Portability Administrator ("LNPA") responsibilities, such questions are misplaced and do not justify any delay or conditioning of the Request's approval.

First, the focus of this proceeding is limited to the neutrality of Neustar³ and its new ultimate controlling owner, Golden Gate Capital. The NAPM, Telcordia, and Ms. Kane do not question the neutrality of either Neustar or Golden Gate Capital.⁴ As demonstrated in Neustar's request for approval, post-acquisition Neustar and Golden Gate Capital satisfy all three prongs of the Commission's rules. That should be the end of the Commission's inquiry.

Second, Telcordia's questions about a new indirect minority investor, GIC Investor, are misguided. GIC Investor is not a telecommunications service provider, nor does it have a vested interest in the outcome of numbering administration. Moreover, GIC Investor has no practical or legal ability to exert undue influence over Neustar because Aerial Investors has agreed to implement the Neutrality Plan attached to the Request and to place its entire ownership interest in Neustar into a voting trust. The voting trust places control of Neustar's numbering administration activities solely under the control of Golden Gate Capital, which has certified its neutrality. Both the voting trust and the Neutrality Plan are similar to arrangements previously approved by the Commission.

Third, Telcordia and Ms. Kane raise several arguments that are beyond the scope of this proceeding. For example, their claims about Neustar's conduct during the LNPA transition are inaccurate and unrelated to this transaction and should be addressed, if at all, pursuant to the

³ Neustar, Inc. refers only to the numbering administration services listed in the Request at 1 (NANPA, LNPA, PA, TRS Numbering Administrator) (and is described as "the NPAC Related Entity" or "the Company" in the Neutrality Plan).

⁴ Indeed, while the NAPM does not object to the transaction, Ms. Kane does not address the neutrality issue at all. Instead, she states "I provide no judgement" as to whether "Neustar will continue to be impartial and neutral" under its new ownership. Kane Comments at 2.

appropriate contractual dispute-resolution mechanisms that govern the LNPA transition. Similarly, the national security issues raised by Telcordia are currently being reviewed by the same national security agencies that would undertake such a review with respect to the Request. It would therefore be redundant for the Commission to create or undertake a separate national security review.

In sum, the limited comments filed in response to Neustar's request fail to raise any issue that should cause the Commission to question Neustar's neutrality or expand the scope of its traditional neutrality inquiry. Accordingly, the Commission should approve the new ownership of Neustar's numbering administration functions.

II. NEUSTAR AND ITS NEW CONTROLLING OWNER ARE NEUTRAL UNDER THE COMMISSION'S RULES.

To ensure that Neustar will remain neutral despite the change in ownership, the Commission should focus its attention on Neustar and its new ultimate controlling owner, Golden Gate Capital.⁵ Because Neustar and Golden Gate Capital are neutral, the transaction should be approved.

Neustar will remain a neutral entity after this transaction. Under the Commission's neutrality rules, Neustar: (1) may not be an affiliate of any Telecommunications Service Provider ("TSP"), interconnected VoIP ("iVoIP") provider, or Internet-based Telecommunications Relay Service ("iTRS") provider; (2) may not issue a majority of its debt to, nor may it derive a majority of its revenues from, any TSP or iTRS provider; and (3) may not be subject to undue

⁵ See *Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of Transfer of the Lockheed Martin Communications Industry Services Business*, Order, 14 FCC Rcd 19792, ¶¶ 30-31 (1999) ("Warburg Transfer Order"); cf. *Petition of Telcordia Technologies, Inc. to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration*, Order, 30 FCC Rcd 3082, ¶¶ 168-170 (2015) ("Telcordia Selection Order").

influence by parties with a vested interest in the outcome of numbering administration and activities.⁶ After the acquisition, Neustar will be controlled by Golden Gate Capital, which is not a TSP, iVoIP provider, or iTRS provider, or an affiliate (as defined by the Commission) of a TSP, iVoIP provider or iTRS provider.⁷ Aerial Investors (which is controlled by Golden Gate Capital) is an entity newly formed to acquire, through intermediate corporations, Neustar and is therefore not a TSP, iVoIP provider, or iTRS provider. It is undisputed that Neustar will not issue a majority of its debt to or derive a majority of its revenues from any single TSP, iVoIP provider, or iTRS provider.

Golden Gate Capital likewise satisfies the Commission's neutrality criteria. Golden Gate Capital has certified that it is neutral because it is not affiliated with a Telecom-related entity, does not issue a majority of its debt to or derive a majority of its revenues from any single Telecom-related entity, and is not subject to undue influence.⁸ Telcordia states merely that Golden Gate Capital's certificate "*closely* tracks some of the requirements of 47 C.F.R. § 52.12,"⁹ but in fact, Golden Gate Capital's certification tracks *precisely* all the requirements of Section 52.12 of the Commission's rules,¹⁰ and despite Telcordia's implicit suggestion

⁶ 47 C.F.R. §§ 52.12(a), 64.613(b)(1); *see also id.* § 52.20(d)(1) ("The Pooling Administrator shall be a non-governmental entity that is impartial and not aligned with any particular telecommunication industry segment, and shall comply with the same neutrality requirements that the NANPA is subject to under this part."); *id.* § 52.21(j) ("The term local number portability administrator (LNPA) means an independent, non-governmental entity, not aligned with any particular telecommunications industry segment [...]").

⁷ *See* Request, Exhibit C: Golden Gate Certification.

⁸ *See* Request, Exhibit C: Golden Gate Certification.

⁹ *See* Telcordia Comments at 10 (emphasis added).

¹⁰ Golden Gate Capital's certification also tracks the requirements of 47 C.F.R. § 64.613(b)(1), which pertains to the neutrality of the TRS Numbering Administrator.

otherwise, Telcordia does not identify a single requirement of Commission Rule 52.12 that Golden Gate Capital's certification fails to address.

Concerns about Neustar's neutrality post-closing are unfounded. Because the entity with the sole ability to control Neustar's numbering administration services, Golden Gate Capital, is neutral and there will be no change in Neustar's neutrality, the Commission should approve Neustar's new ownership.

III. TELCORDIA'S CONCERNS ABOUT NEUSTAR'S NEW MINORITY OWNER ARE MISPLACED.

Telcordia also suggests that the parties have not adequately disclosed the ownership of GIC Investor and its interest in TSPs. These complaints have no bearing on Neustar's neutrality. Nevertheless, regardless of GIC Investor's ownership or its other investment holdings, GIC Investor will not be in a position to exert undue influence over Neustar's numbering administration activities.

The Request disclosed that GIC Private Limited ("GIC") was formed to manage the foreign reserves of the Government of Singapore and that an affiliate of GIC Investor has a greater than 10 percent interest in a TSP. To address any concern (however hypothetical) that GIC Investor may be subject to undue influence by a TSP and therefore may improperly influence Neustar in its role as a numbering administrator, Aerial Investors and its members, including its minority investor GIC Investor, have agreed to place Aerial Investors' entire ownership interest in Neustar in a voting trust controlled by Golden Gate Capital.

Telcordia suggests that GIC Investor may also have other undisclosed affiliations with TSPs, citing a filing by GIC with the Securities and Exchange Commission reporting an ownership interest in China Telecom Corporation Ltd. But this filing on its face reports ownership of only 5.07 percent of one class of stock of China Telecom, which is well below the

10 percent threshold for affiliation under the FCC's rules, and indeed, the information in the filing is outdated, as the actual current ownership as of the date hereof is less than 5 percent.

Telcordia also points out the unremarkable fact that GIC does not manage all of the assets of the Government of Singapore, and that the Government has other holdings through equity ownership of Temasek Holdings ("Temasek") that include investments in TSPs. Notwithstanding that GIC, a private limited company, and Temasek are separate entities with distinct roles and mandates and distinct management teams,¹¹ the investment portfolios of GIC Investor and separately held assets indirectly owned by the Government of Singapore are irrelevant to the Request, because (1) GIC Investor will be an indirect minority investor, and (2) the parties have agreed to utilize a voting trust in order to insulate GIC Investor from any involvement in Neustar's numbering administration activities.

Aerial Investors has agreed to place its entire ownership interest in Neustar in a voting trust, as in *Telcordia*, to remove any doubt that the numbering administrator could possibly be subject to undue influence.¹² The voting trust, which will be in substantially the form used in *Telcordia* and *Warburg*, will have the effect of insulating GIC Investor from involvement in Neustar's numbering administration activities. The stock in Neustar will not be voted by Aerial Investors, in which GIC Investor has a minority interest, but by voting trustees designated by Golden Gate Capital, which is unaffiliated with any TSP or with GIC Investor. GIC Investor will have no right to designate a member of Neustar's board. Indeed, unlike in the *Warburg* and

¹¹ See *FAQs - Are Temasek and the Government of Singapore Investment Corp (GIC) the same organization?*, Temasek, available at <http://www.temasek.com.sg/abouttemasek/faqs> (last visited Mar. 24, 2017).

¹² We do not reiterate here Neustar's well-documented objections to the Commission's selection of Telcordia as the next LNPA, which is currently on appeal. *Telcordia Selection Order*, pet. for review pending *Neustar Inc. v. FCC*, No. 15-1080 (D.C. Cir.).

Telcordia cases, the Neutrality Plan prohibits the appointment of any director who has any business connection with the management of GIC Investor.

Telcordia expresses concern about GIC Investor's right to representation on the boards of Aerial Topco GP Inc. ("Aerial GP") and subsidiaries of Neustar that are not engaged in numbering administration activities. This concern is unfounded for the following reasons. First, the voting trust removes Aerial GP, which is the sole manager of Aerial Investors, from the decision-making process with respect to Neustar's numbering administration activities. Aerial Investors and therefore Aerial GP will have no say in the voting trustee's decisions under the voting trust, with certain exceptions relating to extraordinary actions and non-numbering administration activities. Thus, the directors appointed to the Aerial GP board by GIC Investor will have no ability to affect decisions regarding numbering administration.

Second, the exceptions under the voting trust track the exceptions in Telcordia's voting trust previously permitted by the Commission, and permit involvement by GIC Investor in the activities of Neustar's subsidiaries that are not engaged in numbering administration activities. These are distinct businesses unregulated by the FCC (indeed, beyond the FCC's jurisdiction) and therefore not subject to the impartiality requirement set forth in 47 U.S.C. §251(e)(1). Representation on the boards of Neustar's subsidiaries that do not engage in numbering administration activities will not give GIC Investor undue influence over the parent, Neustar, or its numbering administration activities.

Telcordia's remaining concerns about the voting trust are likewise unfounded. Unlike the voting trusts in the *Warburg Transfer Order* and the *Telcordia Selection Order* that were designed to guard against undue influence by the *majority* owner, the voting trust here is intended to eliminate any potential concerns about undue influence by a *minority* owner. Thus,

this voting trust serves as added protection that the parties have offered to ensure that there can be no legitimate issue raised with respect to Neustar’s continued neutrality. The voting trust will remain in place during Neustar’s term as a numbering administrator and will not change without the Commission’s prior written approval.

The voting trust eliminates even the remote possibility of influence from GIC Investor by ensuring control by unaffiliated trustees who owe a fiduciary duty to Neustar, not GIC Investor.¹³ These trustees will be responsible for electing Neustar’s board of directors, who also will be unaffiliated with GIC Investor or any telecommunications service provider. Furthermore, under the voting trust, no investor – other than Golden Gate Capital – has the right to communicate with, let alone influence, Neustar or its management regarding the day-to-day operations of the numbering business.

Because Golden Gate Capital is neutral, no need exists to “require the voting trustees to be independent of” Golden Gate Capital, as Telcordia contends.¹⁴ In contrast to Ericsson, Golden Gate Capital does not have “extensive business interests in the telecommunications sector” or any incentive to prioritize its business interests “over the LNPA contract.”¹⁵ Thus, whatever justification may have existed for the Commission to require that Telcordia’s voting trust be administered by two unaffiliated trustees is lacking here.¹⁶

¹³ *Id.* ¶¶ 32-33.

¹⁴ Telcordia Comments at 13.

¹⁵ *Telcordia Selection Order* ¶¶ 171, 181.

¹⁶ That representatives of Golden Gate Capital may serve and have “ongoing communications with” representatives of GIC Investor on the board of directors of Aerial Topco GP does not mean that the trustees will be subject to “potential[] influence by” GIC Investor, as Telcordia claims. Telcordia Comments at 13. A showing of undue influence requires more than demonstrating an opportunity to talk. And, Telcordia’s position assumes that the trustees will abdicate their fiduciary obligations to Neustar – a position for which Telcordia offers no legal or factual support. The Neutrality Plan prohibits GIC Investor from having any “rights to influence

Nor is there any need for any “code of conduct” to ensure Neustar’s continued neutrality, as Telcordia asserts.¹⁷ In contrast to Telcordia, which has never previously served as the LNPA, Neustar has a demonstrated commitment to and history of neutrality. In addition, unlike Telcordia’s controlling shareholder that has extensive business dealings in the telecommunications sector, Neustar’s proposed controlling shareholder has no such industry dealings. Nonetheless, the parties will adopt an appropriate code of conduct consistent with existing practice contemporaneously with the closing of the proposed transaction.

In sum, a minority investor in a limited partnership that has no management control and has placed its entire equity stake in a voting trust administered by the majority investor is incapable of unduly influencing Neustar. Under the circumstances, the Commission can “be satisfied” that Neustar will not be subject “to undue influence by an entity with a vested interest in numbering administration.”¹⁸

IV. THE COMMISSION SHOULD REJECT ARGUMENTS BEYOND THE LIMITED SCOPE OF THIS PROCEEDING.

Although the only issue before the Commission is whether to approve Neustar’s new ownership, both Telcordia and Ms. Kane attempt to use this proceeding as a forum to raise issues about the LNPA transition unrelated to the proposed change in ownership of Neustar. The

(footnote cont’d.)

or communicate regarding the day-to-day management and operations” of Neustar and authorizes the Commission to approve the trustees as necessary, which should alleviate Telcordia’s purported concerns. Further, the Commission permitted Warburg to have two representatives on Neustar’s Board of Directors. *Warburg Transfer Order* ¶ 12. Ericsson also has representation on iconectiv’s Board of Directors. *Board of Directors*, iconectiv, <http://iconectiv.com/company/board-of-directors> (last visited Mar. 24, 2017).

¹⁷ Telcordia Comments at 12-13.

¹⁸ Telcordia Comments at 5.

Commission should reject their improper attempts to expand the proceeding and impose unrelated conditions.

A. The LNPA Transition Is Unrelated To This Transaction.

Telcordia contends that Neustar has “impeded transition activity.”¹⁹ However, the only “delays” cited in support of this contention involve: (1) the NAPM’s determination to forgo the dispute resolution procedures in the Master Services Agreement between the parties; and (2) a letter from the Wireline Competition Bureau issued in the final days of former Chairman Wheeler’s tenure and shortly before President Trump’s inauguration that is the subject of an Application for Review by Neustar.²⁰

Even if Telcordia had any legitimate claims about Neustar’s conduct in connection with the LNPA proceeding, which is not the case, this ownership change request is not the forum in which such claims should be heard. Rather, Telcordia should raise its concerns in response to Neustar’s Application for Review or ask the NAPM to utilize the dispute-resolution mechanisms that govern the LNPA transition to remedy its concerns.²¹

Telcordia and Ms. Kane also request that the Commission attach transition-related conditions to this transaction – a request that the Commission should summarily reject. The conditions Telcordia and Ms. Kane seek relate to the LNPA transition, not this transaction.²²

¹⁹ Telcordia Comments at 14-15.

²⁰ See Neustar’s Application for Review, CC Docket No. 95-116, at 1-2 (filed Jan. 19, 2017).

²¹ Notably, the NAPM made no such demands in this proceeding. Indeed, the NAPM has a remedy for performance disputes provided by the Master Services Agreement, by which Neustar and the NAPM agreed to address transition related disputes under its governing arbitration procedures.

²² See, e.g., Telcordia Comments at 16 (urging that the Commission “condition approval of Neustar’s acquisition on Neustar’s new owners’ acknowledging that Neustar has [the obligation to cooperate in the LNPA transition]”).

Both Chairman Pai and Commissioner O’Rielly have criticized attempts by parties to use a transaction as leverage to extract concessions unrelated to the merits of the transaction under review.²³ As Commissioner O’Rielly observed, “[i]t is highly inappropriate for the Commission to include items or conditions that are not part of the transaction itself as a price for approval.”²⁴

In addition to being inappropriate, imposing the requested conditions serves no useful purpose. Neustar is already obligated under the Master Services Agreement with the NAPM and under the Commission’s *Telcordia Selection Order* to act reasonably and in good faith with the transition.²⁵ Neustar’s new ownership is fully aware of and is committed to ensuring compliance with these obligations.

B. National Security Issues Are Being Addressed By CFIUS Review.

The issues related to foreign investment raised by Telcordia are best addressed, if necessary, through the Committee on Foreign Investment in the United States (“CFIUS”) and its process for reviewing transactions involving direct or indirect foreign investment in U.S. companies. The parties have voluntarily initiated the CFIUS review process, and the proposed

²³ See, e.g., *Applications of AT&T Inc. & DirecTV*, 30 FCC Rcd 9131, 9366 (2015) (statement of Commissioner Ajit Pai) (“But the FCC goes much further, demanding that AT&T satisfy a regulatory wish-list that has nothing to do with the transaction at hand. These conditions are the forced tribute that the company must offer to mollify the Capitol Some conditions are nothing more than policymaking through the merger review process.”); *Applications of Charter Communications, Inc., Time Warner Cable Inc., & Advance/Newhouse Partnership*, 31 FCC Rcd 6327, 6672 (2016) (statement of Commissioner Michael O’Rielly) (“Indeed, some of the conditions are not even merger-specific, much less license-specific.”); *id.* at 6669 (statement of Commissioner Ajit Pai) (“[P]arties have told me that they are explicitly warned not to tell anyone else at the Commission about the conditions the Chairman’s Office is seeking. And when it comes to those conditions, there is no need for them to be relevant to the merger (“merger-specific,” in antitrust parlance).”).

²⁴ *Id.* (statement of Commissioner Michael O’Rielly).

²⁵ Agreement for Number Portability Administration Center/System Management Services between Lockheed Martin IMS and Mid-Atlantic Carrier Acquisition Company, LLC, Article 24; *Telcordia Selection Order* ¶ 159.

transaction, including GIC Investor's indirect minority ownership interest, is currently under review by the Executive Branch.

The FCC has clearly articulated its preference for the Executive Branch agencies that comprise CFIUS to weigh and resolve national security, law enforcement, and related issues. Just last year, the Commission reaffirmed that it would “continue to afford appropriate deference to the expertise of the Executive Branch agencies on issues related to national security, law enforcement, foreign policy, and trade policy,” a deference that is “[c]onsistent with the Commission’s long-standing policy in reviewing foreign ownership of common carrier applicants and licensees.”²⁶ The Executive Branch authorities charged with telecommunications policy also strongly support FCC deference on national security,²⁷ which is grounded in the statutory scheme that established CFIUS and confers responsibility for conducting national security reviews of foreign investments on the president, acting through CFIUS.²⁸

A separate national security review by the FCC would be redundant and create unnecessary delay.²⁹ Therefore, the FCC should continue to follow its general policy of

²⁶ See *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Notice of Proposed Rulemaking, 31 FCC Rcd. 7456 (2016) (reaffirming the Commission’s 2013 Declaratory Ruling addressing the application of Communications Act section 310(b) to proposed foreign ownership of broadcast licensees); see also *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees*, Declaratory Ruling, 28 FCC Rcd. 16244 (2013).

²⁷ Letter from the Honorable Lawrence E. Strickling, Assistant Secretary for Communications and Information, U.S. Department of Commerce, to Marlene H. Dortch, Secretary, FCC (May 10, 2016); NTIA Letter Regarding Information and Certifications from Applicants and Petitioners for Certain International Authorizations, IB Docket No. 16-155, Public Notice, DA 16-531 (May 12, 2016) (emphasis added).

²⁸ Defense Production Act of 1951, as amended, 50 U.S.C. § 4565(b).

²⁹ As has been noted in previous foreign license application rulings, the FCC’s process for reviewing foreign ownership absent a CFIUS review – and the length of time that process takes – can be “absurd,” with current commissioners noting that the FCC should “not creat[e] more work for ourselves.” *In re Pandora Radio LLC*, Declaratory Ruling, 30 FCC Rcd. 5104 (2015) (Pai,

deferring to the Executive Branch national security agencies in reviewing proposed foreign investments.

Moreover, the Neustar acquisition is different than Telcordia's award of the LNPA contract, which required the FCC to construct an *ad hoc* national security review process. The award of the LNPA contract to Telcordia was the result of an unusual selection process that triggered neither CFIUS, Team Telecom, nor the federal government contract rules relating to national security, so that any national security issues had to be addressed in the LNPA contract itself. In this case, however, Neustar is being acquired in a manner in which a foreign entity will have an indirect ownership interest. The parties have voluntarily submitted to the CFIUS process, and that process will involve – as all CFIUS processes do – the same agencies that would consider a request for review from the FCC. As a result, it would be redundant for the FCC to commission a separate national security review of this transaction, and the FCC should defer to the CFIUS process in keeping with its general practice.

V. CONCLUSION

For the foregoing reasons, the Commission should approve the new ownership of Neustar's numbering administration functions.

(footnote cont'd.)

concurring). Instead, “coordinating with executive branch agencies” regarding national security concerns – in this case, through the CFIUS process – is a better procedure. *Id.* at 30 FCC Rcd. 5106 (O’Rielly, concurring).

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